United Nations CAT/C/56/D/604/2014

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
17 February 2016

Original: English

Committee against Torture

Communication No. 604/2014

Decision adopted by the Committee at its fifty-sixth session (9 November-9 December 2015)

Submitted by:	Z.H. (represented by counsel Rajwinder Singh Bhambi)
Alleged victim:	The complainant
State party:	Canada
Date of complaint:	18 May 2014 (initial submission)
Date of present decision:	20 November 2015
Subject matter:	Deportation to Pakistan
Procedural issues:	Non-exhaustion of domestic remedies; incompatible with Convention
Substantive issues:	Non-refoulement
Articles of the Convention:	1, 3 and 22

GE.16-02286(E)

Please recycle

Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-sixth session)

concerning

Communication No. 604/2014*

Submitted by:	Z.H. (represented by counsel Rajwinder Singh Bhambi)
Alleged victim:	The complainant
State party:	Canada
Date of complaint:	18 May 2014 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 20 November 2015,

Having concluded its consideration of complaint No. 604/2014, submitted to it by Z.H. under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainant is Z.H., a national of Pakistan, born on 16 November 1986, who, at the time of submission of the communication was residing in Canada and awaiting deportation to Pakistan, following the rejection of his application for asylum on 18 October 2013. The complainant claims that deportation to Pakistan would constitute a violation by Canada of articles 1 and 3 of the Convention. The complainant is represented by counsel.

1.2 On 22 May 2014, in application of rule 114, paragraph 1, of its rules of procedure (CAT/C/3/Rev.6), the Committee requested the State party not to remove the complainant to Pakistan while the communication was being considered by the Committee.

Facts as presented by the complainant

2.1 The complainant belongs to the Fiqah Jaffria minority of the Shia sect of Islam (Shiite religion). His father is the President of the Fiqah Jaffria Shiite community in their village, which is located in a Sunni majority area. The complainant and his father have been organizing religious meetings at which they both preach. As a result, the complainant and

* The following members of the Committee participated in the examination of the present communication: Alessio Bruni, Satyabhoosun Gupt Domah, Abdoulaye Gaye, Sapana Pradhan-Malla, Jens Modvig, George Tugushi and Kening Zhang.

his family have been continuously targeted by Sunni extremists groups and have received numerous threats to their life.

2.2 On 5 January 2010, during a religious Shiite meeting organized at the complainant's house, Sunni terrorists, or Lashkar-e-Taiba, opened fire on the people gathered. The complainant was threatened and beaten, and his cousin was killed during this attack. The complainant alleges that he was hospitalized and treated for the following injuries: (a) injuries to and fracture of the right elbow; (b) injuries to the right side of the face; (c) injuries to the back side of his head; (d) a burn to the left arm and hand; and (e) other injuries to his body. The incident was reported to the police, but no action was taken. On 12 February 2010, the Sunni terrorist organization Lashkar-e-Taiba issued a fatwa (death decree) against the complainant's family, as members of the Shia sect of Islam, for blaspheming the prophet of Islam. The complainant alleges that blaspheming the prophet of Islam is an offence punishable by death under sections 259 B and 259 C of the Penal Code. He submits that most Sunni clerics support killings of "infidels" such as himself and reiterates that Sunni extremists will kill him for that offence.

2.3 In May 2010, the complainant left Pakistan for England, fearing for his life. He did not file an application to seek refugee status, because he was informed by persons in his community that he could not seek such protection due to his status as a visitor. He remained in England illegally and returned to Pakistan on 20 July 2012, hoping that the situation had improved. However, on 26 July 2012, the complainant's home was attacked again by Sunni extremists and terrorist groups. The complainant alleges that the attack occurred as soon as the groups became aware of his return from England. The complainant was not present during the attack and members of his family were not injured. The incident was reported to the police, but no prosecution or investigation took place.

2.4 Following the above incident, the complainant's father arranged his travel back to England, where the complainant returned on 28 July 2012, and where he remained until his arrival in Canada, in March 2013. The complainant submits that he did not file any claim for refugee protection during his second stay in England because he had been misguided by persons from his community, who told him that his claim would not succeed in England, that he would be sent back to Pakistan and that only Canada gives a "fair opportunity" to refugee claimants.

2.5 The complainant arrived in Canada on 4 March 2013. On the same day he sought "refugee protection" (asylum) at the international airport in Montreal. The Refugee Protection Division rejected his application in a decision dated 21 June 2013. The complainant appealed the aforementioned decision before the Refugee Appeal Division, which upheld the decision on 18 October 2013. Thereafter, he applied to the Federal Court of Canada for leave to seek judicial review of the decision issued by the Appeal Division. His request was dismissed on 14 February 2014. The complainant submitted that no other remedy was available to him in the State party, as application for a "pre-removal risk assessment" may only be filed one year after the refusal of his refugee application. The complainant claims that he has exhausted all domestic remedies in Canada after the decision of the Refugee Appeal Division on 18 October 2013 and considers that the Appeal Division relied on erroneous findings, without giving proper weight to the evidence before it.

The complaint

3.1 The complainant submits that his forcible return to Pakistan by the State party would expose him to the danger of torture as defined in article 1 of the Convention and be contrary to article 3 of the Convention. To this end, he attaches to his complaint an affidavit signed by his parents, in which they explain that they sometimes need to live in different places in Pakistan to escape the Sunni groups which are still trying to locate their son. The

complainant also asserts that he has continuously been receiving information from his family in Pakistan, by way of affidavits, advising him not to return, as Sunni extremist groups are still targeting and threatening his family and searching for him.

3.2 Regarding the general human rights situation in Pakistan, the complainant submits that the feud between Shia and Sunni and sectarian violence cost thousands of lives every year; that religious minorities are being killed, converted and tortured by the "hardliner Sunni sect of Islam"; that 80 per cent of the population are followers of the Sunni sect; that every year, hundreds of Shia and their mosques are targeted by suicide bombers and gunmen from "radical Islamic terrorist organizations of the Sunni"; that the basic religious freedoms and human rights of religious minorities are violated; and that the Government fails to protect them.

3.3 The complainant further submits that those denied refugee status and returned to Pakistan may be potential targets of the Pakistani authorities, in particular torture and arbitrary detention.[1]

State party's observations on the merits

4.1 On 21 January 2014, the State party submits that the communication is inadmissible in accordance with article 22 (2) and (5)(b) of the Convention and rules 113 (b), 113 (c) and 113 (e) of the Committee's rules of procedure because: the complainant has failed to exhaust all available domestic remedies that might allow him, or might have allowed him, to remain in Canada; the communication falls outside the scope of article 3 of the Convention since the complainant's alleged agents of persecution are non-State entities, and there is no evidence that the Government of Pakistan is or was in any way involved with or acquiescent in threats allegedly made against the complainant by the non-State groups; and he has failed to substantiate, on even a prima facie basis, that he faces a real and personal risk of torture in Pakistan.

4.2 Should the communication be declared admissible, the State party submits, on the basis of the same considerations, that the communication is wholly without merit. Although the situation of Shia Muslims in Pakistan is problematic, the complainant has failed to demonstrate that he would face a personal risk of torture should he be returned there.

4.3 The State party restates the complainant's claims and notes that the complainant has provided with his communication evidence that has not been reviewed by Canadian decision-makers, such as affidavits from his parents and a community leader that post-date the domestic decisions, stating that he had been tortured in his village in the past by Sunni extremists and that the Sunni hardliners continue to search for him and his family in their village in order to kill them. The affidavits also state that the complainant's parents are forced to live in hiding. The complainant has also provided documents in Urdu, described as two police reports and an invitation confirming a Shia meeting at the complainant's home in Pakistan.

4.4 The State party submits that the complainant attempted to enter its territory on 4 March 2013 with a British passport and under a false identity, claiming that he was coming for holidays. It was only after several questions were posed by an immigration officer that he revealed his Pakistani identity and claimed refugee protection. When interviewed by the immigration officer, the complainant stated that his fear of returning to his country was based on problems with his family. He did not claim that he faced threats in Pakistan by

[1] The complainant refers to the Immigration and Refugee Board of Canada Response to Information Request entitled "Pakistan: Treatment of failed refugee claimants in Pakistan" (2 December 2008), available at: www.justice.gov/sites/default/files/eoir/legacy/2014/03/04/PAK102974.E.pdf.

reason of his religion, although he later asserted this as the primary basis for his refugee protection claim in his Basis of Claim form. In that form, dated 9 March 2013, the complainant asserted that he was claiming refugee protection because he and his family — prominent members of the Shia community in his town — were threatened by the "Pakistan Taliban and Lashkar-e-Taiba and the community of suni people" in Pakistan. He claimed that he had been beaten and tortured by the Lashkar-e-Taiba in January 2010 and that his cousin had been killed during that incident. He also stated that he would be killed and tortured by the Lashkar-e-Taiba and Pakistan Taliban should he return to Pakistan; that the police had refused to write a report following the incident in January 2010, and that although he had moved to another part of his country (Karachi), there were problems there as well, so he had returned to his city. On 6 May 2013, the complainant added that his family had been attacked at home on 26 July 2012, six days after he had returned to Pakistan from England and that he had therefore returned to England on 28 July 2012.

4.5 The complainant's claim for protection was heard by the Refugee Protection Division of the Immigration and Refugee Board on 6 May 2013. At the hearing, the complainant was represented by counsel and had the right to adduce evidence and make submissions. The Division is an independent, quasi-judicial, specialized tribunal that considers applications by foreign nationals seeking the protection of the State party based on a fear of persecution, torture or other serious violations of their human rights if they were to be removed to their country of origin. The Division determines not only whether a person is a refugee within the meaning of the Convention Relating to the Status of Refugees, but also whether the claimant is a "person in need of protection" under section 97 of the Immigration and Refugee Protection Act. Section 97 mandates the protection of persons facing a real risk of torture within the meaning of article 1 of the Convention against Torture on removal from the State party. Generally speaking, a person who is determined to be a "person in need of protection" has a statutory right under section 115 of the Immigration and Refugee Protection Act not to be removed. This statutory principle of non-refoulement is in addition to the rights guaranteed by the Canadian Charter of Rights and Freedoms.

4.6 The Refugee Protection Division conducts an oral hearing that is usually held privately and is conducted in an informal and non-adversarial manner. Officials from the United Nations High Commissioner for Refugees may observe the proceedings. Individuals seeking protection as a refugee or a protected person are usually assisted by legal counsel as well as an interpreter and are provided every opportunity to establish, through oral testimony and supporting documentary evidence, that they are a refugee or a person in need of protection. Division members receive comprehensive, ongoing training in the Convention relating to the Status of Refugees and other aspects of the State party's international legal obligations, including the obligation to protect against removal to torture or other equally serious violations of human rights. Division members are well-informed and develop expertise in the conditions and events in countries of alleged persecution or other human rights violations. The Division comes to its conclusions based on the evidence adduced during the oral hearing and all available relevant documentation provided to it. It communicates all of its decisions in writing. The Division provides written reasons for all negative decisions and for positive decisions if the Minister was not present when the Division rendered an oral decision, as well as reasons allowing a claim for refugee protection. In practice, written reasons are provided for almost all decisions.

4.7 The complainant provided documentary evidence and oral testimony to the Refugee Protection Division and had the opportunity to explain any ambiguities or inconsistencies and to respond to any questions that the Division had with regard to his claim. By its decision dated 21 June 2013, the Division determined that the complainant was not a refugee or a person in need of protection and, accordingly, that he was not a person whose removal to his country of nationality would subject him personally "to a danger, believed

on substantial grounds to exist, of torture within the meaning of article 1 of the Convention Against Torture".[2]

4.8 The Refugee Protection Division determined that the complainant was not credible, since there were a number of inconsistencies, omissions and contradictions in his evidence regarding key elements of his claim, including: inconsistencies and omissions in relation to the complainant's past addresses, in particular in relation to where the complainant was living in January 2010, the date of his alleged attack and the dates when he was living in his village, as well as in relation to the complainant's movements within Pakistan closely following the alleged attack; inconsistencies and omissions in relation to the identity of the groups the complainant allegedly feared in Pakistan and the organizations that allegedly attacked him in January 2010; and inconsistencies and omissions in relation to the complainant's allegations about threats specifically directed against him in his village after his final departure from Pakistan. The complainant was not able to explain these inconsistencies and omissions to the Division's satisfaction, and the Division found that his attempted explanations sometimes resulted in additional contradictions.

4.9 The Refugee Protection Division also found that the complainant's past behaviour was not consistent with that of someone who feared persecution in his country. In particular: the complainant spent approximately three years in the United Kingdom of Great Britain and Northern Ireland, between May 2010 and March 2013, without claiming asylum there; he travelled to Spain in February 2013 without claiming asylum; the complainant delayed leaving Pakistan even though he had possessed a passport since March 2007 and had allegedly already received death threats before the alleged attack in January 2010; he did not leave Pakistan for the first time until May 2010, when he travelled to the United Kingdom; he returned to Pakistan from the United Kingdom in July 2012, despite stating that he had left Pakistan to save his life; he delayed leaving the United Kingdom for Canada to seek refugee protection until March 2013, even though according to his testimony he had believed since late 2010 or early 2011 that he could not claim asylum in the United Kingdom; he initially sought admission to Canada for vacation purposes and only claimed refugee protection after being questioned by an immigration officer; and he initially stated that he had problems with his family in his country and only later stated that he had been threatened in Pakistan by reason of his religion. In the light of the contradictions, omissions and inconsistencies it found, the Division granted only limited probative value to the evidence submitted by the complainant, including medical and death certificates allegedly relating to his cousin's death in January 2010 and a medical certificate allegedly concerning injuries sustained by the complainant during the same attack.

4.10 The complainant appealed the Refugee Protection Division's decision before the Refugee Appeal Division of the Immigration and Refugee Board, which became operational on 15 December 2012. The Refugee Appeal Division is a specialized tribunal with expertise in refugee issues. It may decide on appeals of decisions by the Refugee Protection Division to allow or reject a person's claim for refugee protection.[3] Subject to certain exceptions, the Refugee Appeal Division only considers evidence that was in front of the Refugee Protection Division. A claimant may provide the Refugee Appeal Division with evidence that was not provided to the Refugee Protection Division when the evidence arose after the claim was rejected, the evidence was not reasonably available or the evidence could not reasonably have been presented to the Refugee Protection Division at the time of the hearing before that Division.[4] An appeal to the Refugee Appeal Division is

[2] See Canada, Immigration and Refugee Protection Act, section 97.

[3] Ibid., section 110 (2). No appeal is available for decisions by the Refugee Protection Division in a number of prescribed instances.

[4] Ibid., section 110 (4).

generally a paper process, based on the written submissions and the evidence provided by the parties. However, the Refugee Appeal Division may hold a hearing if it is necessary to address serious issues with respect to credibility.[5] Appeals are normally considered by a single member of the Refugee Appeal Division. However, a panel of three members may be constituted in certain circumstances (for instance, when an appeal raises unusually complex or emerging legal issues). In cases in which a panel of three members has been constituted, the Refugee Appeal Division may accept written submissions from a representative or agent of the United Nations High Commissioner for Refugees.[6] The Refugee Appeal Division may allow an appeal if it is satisfied that there is an error of law, error of fact or error of mixed fact and law in the decision of the Refugee Protection Division. If the Refugee Appeal Division is satisfied that such an error was made, it may substitute its own determination for that of the Refugee Protection Division or return the matter for redetermination by the Refugee Protection Division.[7]

4.11 The complainant challenged the Refugee Protection Division's decision on the basis that it had erred in its assessment of his credibility, in particular by failing to consider all of the evidence. The complainant did not submit any new evidence and did not request an oral hearing. He was represented by counsel. On 18 October 2013, a single-member panel of the Refugee Appeal Division dismissed the complainant's appeal and confirmed the determination of the Refugee Protection Division that the complainant was not a refugee or person in need of protection. The Refugee Appeal Division concluded that the Refugee Protection Division did not make any errors in its assessment of the complainant's credibility and that it had considered the evidence before it. The Refugee Appeal Division noted that the Refugee Protection Division considered not only the appellant's allegations, but also the responses and explanations that he gave during the hearing, as well as various pieces of evidence on the record. The Refugee Appeal Division also determined that the Refugee Protection Division's decision was consistent with authoritative Canadian case law related to adverse credibility findings, inferences that can be drawn from the failure to claim refugee protection at the earliest opportunity, and the rejection or granting of low probative value to evidence that merely reiterates a version of the facts that the Refugee Protection Division considered to be not very credible.

4.12 The complainant applied for leave to apply for judicial review of the Refugee Appeal Division's decision on 5 December 2013. The Federal Court denied leave on 13 February 2014, due to the complainant's failure to file the required materials. The complainant was represented by counsel for his Federal Court proceedings.

4.13 The State party submits that, since filing his communication with the Committee, the complainant has become eligible for a pre-removal risk assessment, that he applied for such an assessment on 2 December 2014 and that he is subject to a legislative stay of removal pending the determination of his assessment. Pre-removal risk assessment applications are considered by officers who are specially trained to assess risk and, more particularly, to consider the Canadian Charter of Rights and Freedoms as well as international human rights obligations relating to refugee protection. In addition to their training on human rights, international instruments and international law, pre-removal risk assessment officers receive instruction on administrative law and jurisprudence. For persons like the complainant, who have already had their claim determined by the Immigration and Refugee Board, a pre-removal risk assessment application is an evaluation largely based on new

[5] Ibid., sections 110 (3) and 110 (6).

[6] Ibid., sections 110 (3) and 163; and Immigration and Refugee Board of Canada, "Designation of Three-Member Panels", available at: www.irb-cisr.gc.ca/Eng/BoaCom/references/pol/pol/Pages/PolRadSar3MemCom.aspx.

[7] See Canada, Immigration and Refugee Protection Act, sections 110 and 111.

facts or evidence that may demonstrate that the person is now at risk of persecution, torture, risk to life or risk of cruel or unusual treatment or punishment. Its purpose is to assess whether there have been any new developments since the final Immigration and Refugee Board determination that could affect the risk assessment. For this reason, section 113 (a) of the Immigration and Refugee Protection Act provides that evidence submitted for the purpose of a pre-removal risk assessment must be "new evidence that arose after the rejection [of the claim to refugee protection] or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection." Pre-removal risk assessment decisions may be judicially reviewed by the Federal Court with leave. A judicial stay of removal pending the disposition of that application or the disposition of any application for judicial review of the decision may also be available. To grant a stay, the Court must be satisfied that there is a serious issue with the decision, there is a risk of irreparable harm to the person concerned, and that the balance of convenience favours the applicant.

4.14 On 18 October 2014, the complainant became eligible to apply for permanent residence in the State party on the basis of humanitarian and compassionate considerations and he submitted an application on that basis on 17 December 2014. Such applications must be considered by the Minister of Citizenship and Immigration or his delegate. The assessment consists of a broad, discretionary review by the decision maker to determine whether a person should be granted permanent residency for humanitarian and compassionate reasons. The test is whether the applicant would suffer unusual and undeserved or disproportionate hardship if he or she had to apply for a permanent resident visa from outside of Canada. The decision maker considers and weighs all the relevant evidence and information, including the applicant's written submissions. Following legislative changes to the State party's refugee system in 2010, applications on the basis of humanitarian and compassionate considerations are no longer based on the kinds of risks that are already assessed within the separate refugee determination or pre-removal risk assessment processes, such as risk to life or risk of torture. Nevertheless, facts underlying those risks may be relevant insofar as they are related to whether a claimant would directly and personally experience unusual and undeserved or disproportionate hardship in his or her country of origin. Examples of hardship may also include adverse country conditions that have a direct, negative impact on the applicant. Decisions made on the basis of humanitarian and compassionate considerations are also reviewable, with leave, on judicial review by the Federal Court.

4.15 The State party submits that the communication is inadmissible as a result of the complainant's failure to exhaust all available domestic remedies because: he failed to pursue with due diligence his application for leave to apply for judicial review of the Refugee Appeal Division's decision; his application for a pre-removal risk assessment is pending; his application for permanent residence on the basis of humanitarian and compassionate considerations is pending; and he would be entitled to seek leave from the Federal Court to apply for a judicial review of any negative assessment or decision made on the basis of humanitarian and compassionate considerations. The State party refers to the Committee's jurisprudence that a complaint may be inadmissible when the complainant has not pursued domestic remedies with due diligence[8] and that errors by legal representatives hired by a complainant are not attributable to the State and cannot by themselves constitute an excuse for non-exhaustion of domestic remedies.[9]

[8] See communication No. 395/2009, *H. E.-M. v. Canada*, decision adopted 23 May 2011, paras. 6.4-6.5.

[9] Ibid., paras. 6.4-6.5. See also communications No. 307/2006, *Yassin v. Canada*, decision adopted 4 November 2009, paras. 9.3-9.4; and No. 284/2006, *R.S.A.N. v. Canada*, decision adopted 17

4.16 The State party maintains that it is open to the complainant submitting new evidence for the purposes of his pre-removal risk assessment to support his claim that he is currently at risk of harm if returned to Pakistan, including by reason of being a failed refugee claimant. It also maintains that if the complainant were determined by a pre-removal risk assessment officer to be a person in need of protection, he would not be removed from the State party and would be eligible to apply for permanent resident status. The State party observes that beyond noting that his complaint was filed before he was eligible to receive a pre-removal risk assessment, the complainant has not made any submission to this Committee that the assessment process would not provide an effective remedy in his case.

4.17 The State party further maintains that judicial review by the Federal Court does provide for judicial review of the merits. The Federal Court that performs judicial reviews does so by searching for factual errors, or errors involving both fact and law, generally on a reasonableness standard. If there is an error of law or an unreasonable finding of fact made in an administrative decision, such as a decision of the Immigration and Refugee Board or a pre-removal risk assessment officer, the Federal Court will grant leave to apply for judicial review and will set the decision aside and send the application back for redetermination by a different decision maker.

4.18 The State party also submits that an application on the basis of humanitarian and compassionate considerations is an effective domestic remedy available to those who have had their claim for protection denied, as successful applicants are allowed to remain in the State party.

4.19 Alternatively, the State party submits that the complainant's communication is inadmissible on the grounds of incompatibility with the provisions of the Convention. As the Committee stated in its general comment no. 1, the obligation of non-refoulement in article 3 is confined in its application to cases where there are substantial grounds for believing that the complainant would be in danger of being subjected to torture as defined in article 1 of the Convention.[10] The complainant's allegations concern alleged threats from the Taliban in Pakistan, Lashkar-e-Taiba, Lashkar-e-Jhangvi and "Sunni extremists generally". All of these groups are non-State entities. The acts committed by these groups do not fall under the competence of the Committee. The complainant has produced no evidence and has not even alleged that the Government of Pakistan is in any way involved with or acquiescent in the activities of these groups.

4.20 The complainant does allege that the police failed to take action in response to two complaints made by him in 2010 and 2012, respectively. Objective country reports note that Pakistani police can be ineffective at addressing allegations of sectarian violence.[11] However, the complainant has not demonstrated that any failure by the police to act was tantamount to consent or acquiescence. Unlike in the case of *Dzemajl et al. v. Yugoslavia*,[12] there is no evidence, and the complainant does not allege, that the police were informed in advance of any specific threats faced by the complainant or that they were present at the time but failed to intervene. Moreover, some recent country reports suggest that the

November 2006, para. 6.4

[10] See the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22 of the Convention, para. 1.

[11] The United Kingdom Home Office also notes that "the effectiveness of the police varies greatly by district, ranging from reasonably good to ineffective". See United Kingdom (Home Office), "Country Information and Guidance, Pakistan: Background Information, including actors of protection, and internal relocation" (October 2014), para. 1.2.2, available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/361124/Pakistan_CIG_2014_10_06.pdf.

[12] See communication No. 161/2000, *Dzemajl et al. v. Yugoslavia*, decision adopted 21 November 2002, para. 9.2.

Government of Pakistan is making efforts to prevent religiously motivated attacks from occurring.[13]

4.21 The complainant also alleges that he is accused of blaspheming the prophet of Islam, an offence punishable by death (see para. 2.2). Although the Pakistan Penal Code does contain an offence of blasphemy, the complainant has provided no evidence, and has not alleged, that the accusations advanced by Sunni extremists have been pursued by government officials. The complainant has provided no evidence, and has not alleged, that there are criminal charges pending against him or that he is being investigated by state officials.

4.22 The Committee has consistently viewed communications concerning non-government actors to be inadmissible as falling outside the scope of article 3 of the Convention.[14] Accordingly, the complainant's communication likewise ought to be determined inadmissible pursuant to article 22 (2) of the Convention.

4.23 The State party also maintains that the complainant has not sufficiently substantiated, for the purposes of admissibility, any of his allegations that he faces a real and personal risk of torture in Pakistan, such that his removal to Pakistan would be a violation of article 3 of the Convention. Therefore, the State party submits that the communication is inadmissible on the basis that it is manifestly unfounded, in accordance with rule 113 (b) of the Committee's rules of procedure. It refers to the Committee's general comment No. 1, in which it is stated that it is the complainant's responsibility to establish a prima facie case for the purpose of admissibility of his or her communication[15] and submits that the Committee is only competent to consider communications that substantiate, on at least a prima facie basis, violations of rights protected by the Convention.[16]

4.24 The State party submits that the Committee's general comment No. 1 places the burden upon the complainant to establish that he would personally be at risk. The grounds on which a claim is established must "go beyond mere theory or suspicion".[17] The State

---

[13] The State party refers to United States (Department of State), "Pakistan 2013 International Religious Freedom Report" (2013), p. 6, in which it is stated: "[t]he government bans the activities of, and membership in, several religiously oriented groups that it judges to be 'extremist' or 'terrorist'". In the same report (p.14-15), it is highlighted that, in 2013, Pakistani authorities arrested several extremist leaders responsible for attacks on Shia communities, including leaders of Lashkar-e-Jhangvi; that in late 2013, Prime Minister Mamnoon Hussain and Prime Minister Nawaz Sharif issued public statements condemning a major attack on Shia Muslims in the Punjab; and that the Punjab Chief Minister has also created at least one judicial commission in response to sectarian attacks.

[14] See communications No. 49/1996, *S.V. v. Canada*, Views adopted 15 May 1996, paras. 9.5, 9.8; No. 83/1997, *G.R.B. v. Sweden*, Views adopted 2 June 1997, para. 6.5; Nos. 130/1999 and 131/1999, *V.X.N. and H.N. v. Sweden*, Views adopted 15 May 2000, para. 13.8; No. 138/1999, *M.P.S. v. Australia*, decision adopted 30 April 2002, para. 7.4; No. 218/2002, *Chorlango v. Sweden*, decision adopted 22 November 2004, para. 5.2; No. 326/2007, *M.F. v. Sweden*, decision adopted 14 November 2008, para. 7.5; and No. 373/2009, *Aytulun and Guclu v. Sweden*, decision adopted 19 November 2010, para. 6.5.

[15] General comment No. 1, para. 4.

[16] See communications No. 36/1995, *X. v. The Netherlands*, Views of 17 November 1995; and No. 18/1994, *Y. v. Switzerland*, decision on admissibility adopted 16 September 1994.

[17] See general comment No. 1, para. 6. See also communications No. 326/2007, *M.F. v. Sweden*, decision adopted 14 November 2008, para. 7.3; No. 301/2006, *Z.K. v. Sweden*, decision adopted 9 May 2008, para. 8.3; No. 36/1995, *X. v. The Netherlands*, Views of 17 November 1995, para. 7.2; more recently see No. 258/2004, *Dadar v. Canada*, decision adopted 23 November 2005, para. 8.3; No. 282/2005, *S.P.A. v. Canada*, decision adopted 7 November 2006, para. 7.1; No. 298/2006, *C.A.R.M. v. Canada*, decision adopted 18 May 2007, para. 8.10; and No. 333/2007, *T.I. v. Canada*,

party submits that there are no substantial grounds for believing that the complainant would be in danger of being subject to torture upon return to Pakistan. The complainant's communication raises credibility issues; there is no evidence of past torture within the meaning of the Convention; recent reports on country conditions in Pakistan suggest that, even if the complainant could be said to face a real risk of torture in his community, he may have an internal flight alternative which would allow him to live without risk of serious harm in other parts of Pakistan; and the complainant has not substantiated his allegation that he would be at risk upon return to Pakistan as a failed refugee claimant.

4.25 The State party is aware that the Committee does not expect complete accuracy from the complainant of a communication. All that is required is that the evidence may be considered "sufficiently substantiated and reliable".[18] Nevertheless, important inconsistencies in the complainant's case are "pertinent to the Committee's deliberations as to whether the complainant would be in danger of being tortured upon return".[19] The State party recalls that general comment No. 1 includes "evidence as to the credibility of the complainant" and "any factual inconsistencies in the claim" as relevant considerations.[20] The State party submits that it is not the role of the Committee to weigh evidence or reassess findings of fact made by domestic courts or tribunals[21] and notes that the complainant's allegations in this communication have been considered by competent, impartial domestic tribunals and were determined not to support a finding of personal risk for him in Pakistan.

4.26 The State party further submits that it is not within the scope of review by the Committee to re-evaluate findings of credibility made by competent domestic tribunals and refers to the Committee's jurisprudence that it cannot review credibility findings "unless it is manifest that the evaluation was arbitrary or amounted to a denial of justice".[22] The complainant has not identified or explained any specific examples of "arbitrariness" or "denials of justice", and the decisions of the Immigration and Refugee Board do not suffer from any such defects in this case. Thorough assessments of the complainant's allegations of risk were conducted by the domestic decision makers, and, accordingly, considerable weight ought to be given by the Committee to the findings of fact made and the conclusions on the lack of credibility.[23]

4.27 The State party submits that the documentary evidence provided by the complainant does not support his allegations of past torture and is of limited probative value. There are inconsistencies between the descriptions of the complainant's injuries contained in his complaint and the descriptions of the injuries in the medical records. The complainant alleged that on 5 January 2010, Pakistani Sunni terrorists or Lashkar-e-Taiba opened heavy fire during a religious meeting at his house. He alleges that he had to be hospitalized and that he was treated for the following injuries: (a) injuries to and fracture of the right elbow; (b) injuries to the right side of the face; (c) injuries to the back side of his head; (d) a burn to the left arm and hand; (e) and other injuries to his body. However, not all of these

---

decision adopted 15 November 2010, para. 7.3.

[18] See communication No. 34/1995, *Aemei v. Switzerland*, decision on admissibility adopted 22 November 1995, para. 9.6.

[19] See communications No. 148/1999, *A.K. v. Australia*, decision adopted 5 May 2004 , para. 6.2; and No. 106/1998, *N.P. v. Australia*, Views of 6 May 1999, para. 6.6.

[20] See general comment No. 1, para. 8.

[21] See communications No. 148/1999, *A.K. v. Australia*, decision adopted 5 May 2004, para. 6.4; and No. 215/1986, *G.A. van Meurs v. the Netherlands*, Views of 13 July 1990, para. 7.1.

[22] See, for example, the decisions in communications No. 148/1999, *A.K. v. Australia*, para. 6.4; and No. 135/1999, *S.G. v. The Netherlands*, para. 6.6.

[23] See communication No. 370/2009, *E.L. v. Canada*, decision adopted 21 May 2012, para. 8.7.

injuries are documented in the medical certificate or record of medical treatment submitted by the complainant. These indicate that he had a lacerated wound on the right elbow, on the right side of his face and on the back of his head as a result of an assault. The State party submits that there is no evidence of past torture within the meaning of the Convention. The complainant has not provided any medical analysis as to how the injuries described in the medical reports would be consistent with torture.

4.28 The State party submits that, even if the complainant is given the benefit of the doubt and it is accepted that he was tortured in January 2010, this factor alone does not support a conclusion that he would be tortured in the future. The State party refers to the Committee's consistent views that previous experience of torture is but one consideration in determining whether a person faces a personal risk of torture upon return to his country of origin.[24]

4.29 The complainant relies on the affidavit evidence he has presented to the Committee to support his claim that he continues to face threats from Sunni extremists in Pakistan. The affidavits indicate that the complainant's parents have been informed by their neighbours that the Sunni extremists are still going to their community to ask about the family's whereabouts, including the whereabouts of the complainant, and that the Sunni extremists are still trying to locate the complainant and his family in their village in order to kill them. The State party reiterates that its decision makers have not yet been given an opportunity to review this evidence. While the State party does not seek to prejudge this evidence, it observes that there is considerable overlap in the text of the two affidavits, which calls into question the reliability of this evidence. In addition, it notes that the affidavits do not identify any future risk of torture that the complainant may personally face in other parts of Pakistan.

4.30 The State party submits that no weight should be given to the documents provided by the complainant in the Urdu language. The complainant has failed to translate or indicate with any specificity the contents of these documents in an official language of the United Nations.

4.31 The State party submits that since the complainant has not established that he would be at personal risk if returned to Pakistan, it is unnecessary for the Committee to go on to consider the general human rights situation in Pakistan. In *V.N.I.M. v. Canada*, the Committee considered that when an complainant's allegations are neither credible nor corroborated by objective evidence, it is "not necessary to examine the general human rights situation" in the country of origin.[25] The State party submits that the analysis in *V.N.I.M. v. Canada* applies in the present instance.

4.32 In the event that the Committee considers it necessary to consider the general human rights situation in Pakistan, the State party submits that, even if the complainant could be said to face a real risk of torture in his community with the consent or acquiescence of state officials, objective evidence concerning conditions in Pakistan suggests that the complainant may have an internal flight alternative that would allow him to live without risk of serious harm in other parts of Pakistan. The State party acknowledges that the situation in Pakistan for Shia Muslims is problematic.[26] However, the United Kingdom

[24] See, for example, communications No. 235/2003, *M.S.H. v. Sweden*, decision adopted 14 November 2005; and No. 338/2008, *Mondal v. Sweden*, decision adopted 23 May 2011.

[25] See communication No. 119/1998, *V.N.I.M. v. Canada*, decision adopted 12 November 2002, paras. 8.4-8.5.

[26] The State party acknowledges the Human Rights Committee's relatively recent final views in communication No. 1898/2009, *Choudhary v. Canada*, Views adopted 31 August 2009. It does not dispute the general view that Shia Muslims face some level of persecution in Pakistan, a Sunni

Home Office, in a report from 2014 on religious freedom in Pakistan, notes that there are a significant number of Shia communities across Pakistan. Shia mosques and places of worship are located in most major cities and towns, and in most cases there are options for Shia Muslims to relocate to areas of relative safety in Pakistan.[27] The same report also states that "[t]he greatest threat for Shia Muslims in Pakistan is sectarian violence and targeting by militants, although the intensity and frequency may vary from region to region".[28] The ability of state authorities to protect religious minorities also varies from region to region. For instance, during the holy month of Muharram, in 2013, terrorist attacks on Shia processions in the major cities of Karachi and Lahore were thwarted by effective police action.[29]

4.33 The State party recalls the Committee's consistent views affirming that persons who would be able to live free of risk in another part of their own country are not entitled to international protection.[30] The complainant has not provided sufficient objective evidence to substantiate that he would not be able to reside free of personal risk in another part of Pakistan. The State party also notes that the complainant has not provided documentary evidence that someone with his profile — the son of a local Shia leader — would be at particular risk of torture in Pakistan.

4.34 The complainant has not substantiated his allegation that he would be at risk of torture upon return to Pakistan as a failed refugee claimant. In support of this allegation, the complainant has provided in the body of his complaint an extract from a research document published by the Immigration and Refugee Board dated 2 December 2008.[31] While the text in question describes incidents of detention prior to 2005, it does not, as a whole, suggest that failed refugee claimants are subjected to treatment in Pakistan amounting to torture. Moreover, the complainant has omitted relevant portions of the research document, which notes that no reported cases of detentions or disappearances of failed refugee claimants were found after 2005 during the period covered by the report. In addition, the document states that the Human Rights Commission of Pakistan, an independent non-governmental organization that monitors the state of human rights in Pakistan, stated in correspondence dated 24 May 2005 that failed refugee claimants "are not usually detained".[32] The

---

majority country. However, *Choudhary v. Canada* is distinguishable from the present communication on several grounds: in *Choudhary v. Canada*, the author had provided proof of State involvement in the persecution, namely proof that criminal blasphemy charges had been laid against him; in contrast, the complainant in the present case has provided no evidence of State acquiescence. Secondly, the Human Rights Committee considered violations of articles 6 and 7 of the International Covenant on Civil and Political Rights, the right to life and the right to be free from torture or cruel, inhuman or degrading treatment or punishment. Articles 6 and 7 are much broader than the non-refoulement obligation contained in article 3 of the Convention, which is restricted to torture, not other forms of persecution.

[27] See United Kingdom (Home Office), "Country Information and Guidance: Pakistan: Religious Freedom" (2014), para. 1.3.37, available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/331640/Pakistan_CIG_Religious_freedom_2014_07_16_v1_0.pdf. However, see also United States (Commission on Religious Freedom), 2014 Annual Report, pps. 75-77, available at: www.uscirf.gov/reports-briefs/annual-report/2014-annual-report.

[28] See United Kingdom Home Office, "Country Information and Guidance: Pakistan: Religious Freedom", para. 1.3.33.

[29] Ibid., paras. 2.5.9, 1.3.35.

[30] See communications No. 183/2001, *B.S.S. v. Canada*, decision adopted 12 May 2004, para. 11.5; and No. 245/2005, *S.S.S. v. Canada*, decision adopted 16 Nov 2005, para. 8.5.

[31] Immigration and Refugee Board of Canada (Research Directorate), "Pakistan: Treatment of failed refugee claimants in Pakistan" (2 December 2008).

[32] Immigration and Refugee Board of Canada Response to Information Request. The Human Rights

complainant has thus not substantiated that he faces a real and personal risk of torture as a failed refugee claimant should he be returned to Pakistan.

Complainant's comments

5.1 On 16 February and 22 March 2015, the complainant reiterates that he is Shia Muslim and belongs to a religious minority in Pakistan. He submits that, if removed to Pakistan, he would be exposed to: serious risk to his life; risk of torture in accordance at the hands of Pakistan security and intelligence agencies and Sunni terrorist organizations; risk of cruel and unusual treatment and punishment; serious risk of abduction, kidnapping or illegal detention at the hands of terrorist organizations. He reiterates that he and his family continue to receive threats from these terrorists. In the past he has been injured by those terrorists, and his cousin has been killed by Sunni terrorists.

5.2 The State party claimed that he was not under threat by the Government of Pakistan or its officials, but the complainant submits that the Government of Pakistan is also involved indirectly in the persecution and killing of minorities in Pakistan. When he approached officials to seek justice, he did not receive help and was forced to leave Pakistan. The police and Government of Pakistan are reluctant to take any action against those organizations. In fact, those organizations are supported by the Sunni majority Government through its intelligence agency.

5.3 He maintains that the current situation of minorities in Pakistan is the worst ever in the history of the country, as Sunni organizations are killing Shia Muslims, Christians or other minorities on a daily basis. For example: "From 8 to 10 June 2014, Tehrik-e-Taliban Pakistan gunmen laid siege to the Jinnah International Airport in Karachi, causing deaths and injuries"; In December 2014, Pakistani Taliban killed more than 145 school children in the cantonment area of Peshawar. In January 2015, Taliban bombed a Shia mosque and killed 40 Shia Muslims, and on 13 February 2015, Taliban bombed a Shia mosque, killing 20 Shia Muslims and injuring dozens more.

5.4 The complainant submits that the security situation remains fragile and unpredictable. Terrorist attacks have occurred throughout Pakistan, causing many deaths and injuries. Heightened security measures are currently in place throughout the country. Checkpoints may be set up without warning. Terrorist tactics include suicide bombings, improvised explosive devices and political assassinations. Some attacks have involved detailed planning to maximize casualties through multiple and consecutive explosions. Extremism, ethnic divisions, sectarian strife, regional political disputes and the situation in Afghanistan are usually the reasons behind these attacks. The complainant notes that, on the one hand, Canada warned against travel to Pakistan and, on the other, it is very keen to deport foreign nationals to Pakistan. This indicates that Canada does not consider foreign nationals to be equal to Canadians.

5.5 The complainant submits that there is clearly a substantial risk of torture for him and that he has clear marks of torture on his body and medical certificates from Pakistan confirming the treatment received for the injuries sustained.

5.6 The complainant submits that, at the time of submission of his communication to the Committee, the pre-removal risk assessment and the application for residence on humanitarian and compassionate grounds were not available to him. He became eligible for a pre-removal risk assessment on 17 November 2014, and he applied on 26 November 2014. He applied for residence on humanitarian and compassionate grounds on 13

Commission of Pakistan describes itself as an independent non-governmental organization. See Human Rights Commission of Pakistan, "Mission & Vision" (2015), available at: http://hrcp-web.org/hrcpweb/about-hrcp/mission-vision/.

December 2014. The application for residence on humanitarian and compassionate grounds does not result in a stay of removal unless it is approved in principle, which may take years of processing. He further submits that "it is absolutely unlikely that these applications will succeed", that the decision of the pre-removal risk assessment is imminent, as it has a very short processing time and high rejection rate. After the dismissal of the pre-removal risk assessment or the application on humanitarian and compassionate grounds, there is no other effective recourse available to stay his removal to Pakistan. The complainant maintains that the leave for a judicial review of any negative pre-removal risk assessment or refusal to grant residence on humanitarian and compassionate grounds is almost never granted. He maintains that he has exhausted all available effective remedies in the State party.

5.7 The complainant reiterates that he has established a strong prima facie case that he has been a victim of torture in the past and that he faces a substantial risk of torture. He further submits that he provided up-to-date information on the human rights situation in Pakistan and refers to the International Religious Freedom Report for 2013 of the Bureau of Democracy, Human Rights and Labor of the United States Department of State, which states that sectarian violence and discrimination against religious minorities continued,[33] that the Government's respect for and protection of the right to religious freedom remained poor, and that the Government's limited capacity and will to investigate or prosecute the perpetrators of attacks against religious minorities allowed a climate of impunity to persist.[34] The complainant also refers to documentation submitted previously to illustrate the human rights situation in Pakistan. He submits that the domestic tribunals in Canada had recognized "the type of abuse that is still taking place" and refers to a judgment of the Federal Court, *Kaur v. Canada (Minister of Citizenship and Immigration)*.

5.8 With regard to the internal flight alternative the State party had suggested exists for the complainant, he submits that the position of the Office of the United Nations High Commissioner for Refugees is that when the persecutors are agents of the State, such an alternative does not exist. He further submits that he is at risk from Sunni terrorists who are everywhere in Pakistan, hence the internal flight alternative is not a safe option for him. He reiterates that the risk he is facing is personal.

5.9 The complainant submits that despite being a party to the Convention and having made a declaration under article 22 of the Convention, the State party "has now opted to adopt a new process to deport the individuals to countries where they are at the risk of life or torture" He submits that the recent statistics of the State party's immigration authorities state that only around 33 per cent of the claims for refugee protection in Canada are accepted.[35]

State party's further observations

6.1 On 19 June 2015, the State party requests the withdrawal of the Committee's interim measures request and reiterates its submissions regarding the admissibility and merits of the communication. In addition, the State party objects to the complainant's suggestion that its decision makers failed to take into account or arbitrarily rejected the evidence submitted in support of his claim for protection. The Refugee Protection Division considered the evidence submitted, including medical evidence, but granted it only limited probative value

[33] See United States (Department of State), "Pakistan 2013 International Religious Freedom Report", at page 17, available at: www.state.gov/documents/organization/222551.pdf.

[34] Ibid.p. 1.

[35] The complainant refers to Committee's 2012 concluding observations (CAT/C/CAN/CO/6) and to the Amnesty International news release of 5 June 2012, entitled "Canada Must Move Immediately to Implement UN Committee against Torture Recommendations".

in light of the numerous contradictions, omissions and inconsistencies it found. On appeal, the Refugee Appeal Division carefully analysed the decision of the Refugee Protection Division and concluded that that Division did not make any errors in its assessment of the author's credibility or its consideration of the evidence. The State party observes that the Federal Court decision in *Kaur v. Canada*[36] does not support the assertion that the author faces a present risk at the hands of Sunni terrorist in Pakistan. The *Kaur v. Canada* decision concerns a Sikh woman from the Punjab in India, and the perpetrators of violence were stated to be the police, not non-State actors.

6.2 With respect to the documentary evidence on sectarian violence in Pakistan submitted in support of his supplemental submission, the State party submits that the Committee should not base its views on evidence that has not yet been considered by available and effective domestic processes.[37] In any event, it observes that a situation of generalized risk of violence on account of religious beliefs does not support allegations of a personalized risk of torture and notes that most of the incidents of attacks against Shia Muslims were reported to have occurred in Karachi.

6.3 The State party also maintains that it is not within the scope of review of the Committee to consider the Canadian system in general, but only to examine whether, in the circumstances giving rise to the complaint before it, Canada has complied with its obligations under the Convention.[38] In any event, the State party strongly objects to these allegations and considers it necessary to refute the main contentions made, which have no basis in fact or law. It observes that the supplemental submission fails to identify any alleged injustices in the pre-removal risk assessment process other than to suggest that any such application is unlikely to be fairly determined. It submits that this allegation is unsupported by any evidence and should not be accorded any weight by the Committee and that the allegations that the process to request consideration on humanitarian and compassionate grounds is unfair and ineffective are without merit.

6.4 The State party submits that claimants who are not yet eligible to apply for a pre-removal risk assessment but who allege to have new and compelling personalized evidence of risk may request from an enforcement officer a deferral of removal. Enforcement officers have limited discretion under the Immigration and Refugee Protection Act as to the timing of a removal, since an enforceable removal order "must be enforced as soon as possible".[39] However, the Federal Court of Appeal has repeatedly held that enforcement officers must defer removal if proceeding with the removal would expose the person to "a risk of death, extreme sanction or inhumane treatment".[40] If a deferral of removal is refused, that decision may be judicially reviewed by the Federal Court with leave. A judicial stay pending the outcome of an application for leave and for judicial review of a negative deferral decision may also be available.

---

[36] *Kaur v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1491, paras. 2 and 32, available at: http://canlii.ca/t/1m0m6.

[37] See communications No. 35/1995, *K.K.H. v. Canada*, decision on admissibility adopted 22 November 1995, para. 5; and No. 30/1995, *P.M.P.K. v. Sweden*, decision on admissibility adopted 20 November 1995, para. 7.

[38] The State party refers to the comments of the Committee in communication No. 15/1994, *Khan v. Canada*, Views of 15 November 1994, para. 12.1.

[39] Canada, Immigration and Refugee Protection Act, section 48 (2). The full text of section 48 is available at: http://laws-lois.justice.gc.ca/eng/acts/I-2.5/FullText.html.

[40] See *Canada (Public Safety and Emergency Preparedness) v. Shpati*, 2011 FCA 286, paras. 41-45, 52, available at: http://canlii.ca/t/fnkq2; and *Baron v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81, para. 51, available at: http://canlii.ca/t/22rzn.

6.5 The State party further observes that claimants have additional domestic remedies available to them during the 12-month period of ineligibility to apply for a pre-removal risk assessment or consideration on humanitarian and compassionate grounds. Where a claimant seeks leave to apply for a judicial review of a decision by the Refugee Protection Division or Refugee Appeal Division , this recourse generally occurs during that 12-month interval. Moreover, a stay of removal may be available pending the outcome of an application to the Federal Court for leave and for judicial review of a decision of the Refugee Protection Division or of the Refugee Appeal Division. In addition, provision is made in section 112 (2.1) of the Immigration and Refugee Protection Act for exemptions from the 12-month pre-removal risk assessment ineligibility period when there has been a change in conditions in a claimant's country of nationality that could put him or her at risk. The Act also provides for exceptions to the 12-month ineligibility period for making an application based on medical humanitarian and compassionate grounds or where removal may have an adverse effect on the best interests of a child.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 In accordance with article 22 (5) (b) of the Convention, the Committee does not consider any complaint, unless it has ascertained that the complainant has exhausted all available domestic remedies. This rule does not apply where it has been established that the application of those remedies has been unreasonably prolonged, or that it is unlikely, after a fair trial, to bring effective relief to the alleged victim.

7.3 The Committee takes note of the State party's argument, inter alia, that the complaint should be declared inadmissible under article 22 (5) (b), of the Convention, as the complainant failed to pursue with due diligence his application for leave to apply for a judicial review of the 18 October 2013 decision by the Refugee Appeal Division dismissing his appeal against the 21 June 2013 decisions of the Refugee Protection Division. The Committee notes that the complainant had applied for leave for a judicial review of the Refugee Appeal Division's decision on 5 December 2013, but that it was denied because of the complainant's failure to file the required materials. The Committee further notes that the complainant does not challenge the effectiveness of the remedy of judicial review of the decision, nor does he provide an explanation as to why he did not file the required documents on time, although he had an opportunity to do so. The Committee further notes that the complainant has not argued that he was represented by a State-appointed lawyer at the relevant time, recalls that errors made by a privately retained lawyer cannot normally be attributed to the State party[41] and concludes that the complainant has failed to advance sufficient elements to justify his failure to complete his application for a judicial review of the decision by the Refugee Appeal Division in his case. The Committee observes that the complainant failed to diligently exhaust the remedy with respect to that negative decision. In the present case, the Committee does not consider that application for leave to apply for a judicial review of the decision would have been an ineffective remedy in the

[41] See communications No. 284/2006, *R.S.A.N. v. Canada*, decision on inadmissibility adopted 17 November 2006, para. 6.4; and No. 307/2006, *E.Y. v. Canada*, decision on inadmissibility adopted 4 November 2009, para. 9.4.

complainant's case, in the absence of any particular circumstances adduced by him in support of such an assumption.[42]

7.4 The Committee is therefore of the view that domestic remedies have not been exhausted in accordance with article 22 (5) (b), of the Convention.

8. Accordingly, the Committee decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the State party and to the complainant.

[42] See communication No. 307/2006, *E.Y. v. Canada*, decision of inadmissibility adopted 4 November 2009, para. 9.3.